

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

TOM JAMES COMPANY, ENGLISH
AMERICAN TAILORING COMPANY,
INDIVIDUALIZED SHIRT COMPANY,
OXXFORD CLOTHES XX, INC.,
HOLLAND & SHERRY, INC., FRANKLIN
CLOTHING COMPANY, IAG
INDUSTRIAL CENTER, INC., THE
HANCOCK COMPANY, THE PICKETT
COMPANY, CROSSVILLE FABRIC
CHILE S.A., and TOM JAMES CHILE S.A.,

Plaintiffs,

v.

ZURICH AMERICAN INSURANCE
COMPANY,

Defendant.

CASE NO. 1:20-cv-1415

NOTICE OF REMOVAL

Defendant, ZURICH AMERICAN INSURANCE COMPANY, (“Defendant”) by and through its attorneys, Katz Korin Cunningham, respectfully removes this action from the Marion County Superior Commercial Court, State of Indiana, where it is currently pending, to the United States District Court for the Southern District of Indiana, Indianapolis Division. This Notice is submitted pursuant to 28 U.S.C. § 1446.

In support of its Removal, Defendant states:

1. On April 10, 2020, an action was commenced in the Superior Court of the State of Indiana in and for the County of Marion, entitled Tom James Company, English American Tailoring Company, Individualized Shirt Company, Oxxford Clothes XX, Inc., Holland & Sherry, Inc., Franklin Clothing Company, IAG Industrial Center, Inc., The Hancock Company, The Pickett

Company, Crossville Fabric Chile S.A., and Tom James Chile S.A. v. Zurich American Insurance Company, Marion County Superior Court Cause No. 49D01-2004-PL-013613. A copy of the Complaint is attached hereto as Exhibit A.

2. The first date upon which Defendant received a copy of the said complaint was April 15, 2020, when Defendant was served with a copy of said complaint. A copy of the Proof of Service of Summons is attached hereto as Exhibit B.

3. **Jurisdiction.** This is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1332, and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §1441(b) in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, because the combined damages sought by Plaintiffs regarding the underlying action exceed this sum. Plaintiffs seek recovery of substantial insurance benefits allegedly due to Plaintiffs under an insurance policy Defendant issued to Tom James Company, together with Plaintiff's attorneys fees. Accordingly, this action seeks damages in excess of the \$75,000 jurisdictional minimum as a legal certainty.

4. **Diversity.** Complete diversity of citizenship exists between Plaintiff Tom James Company and Defendant Zurich American Insurance Company. The Plaintiff Tom James Company was at the time of the filing of this action a Tennessee corporation, and therefore a Tennessee citizen. The Complaint also alleges that Tom James Company has "executive offices" in Indiana. The Defendant was at the time of the filing of this action, and still is a citizen of New York and Illinois because it is a New York corporation with its principal place of business in Illinois. Defendant is not a citizen of Indiana nor does it have its principal place of business in Indiana.

Furthermore, complete diversity of citizenship exists between Plaintiffs English American Tailoring Company, Individualized Shirt Company, Franklin Clothing Company, IAG Industrial

Center, Inc., The Hancock Company, The Pickett Company, Crossville Fabric Chile S.A., and Tom James Chile S.A. on the one hand and Defendant Zurich American Insurance Company on the other hand because the Complaint alleges these Plaintiffs are incorporated with primary business operations in states other than New York and Illinois as follows:

a. Plaintiff ENGLISH AMERICAN TAILORING COMPANY is a manufacturing facility operating in Maryland and incorporated in Delaware; it is therefore a citizen of Maryland and Delaware.

b. Plaintiff INDIVIDUALIZED SHIRT COMPANY is a manufacturing facility operating in New Jersey and incorporated in Delaware; it is therefore a citizen of New Jersey and Delaware.

c. Plaintiff FRANKLIN CLOTHING COMPANY is a manufacturing facility operating in Pennsylvania and incorporated in Pennsylvania; it is therefore a citizen of Pennsylvania.

d. Plaintiff IAG INDUSTRIAL CENTER, INC. is a distribution center operating in Pennsylvania and incorporated in Tennessee; it is therefore a citizen of Pennsylvania and Tennessee.

e. Plaintiff THE HANCOCK COMPANY is a manufacturing facility operating in Pennsylvania and incorporated in Tennessee; it is therefore a citizen of Pennsylvania and Tennessee.

f. Plaintiff THE PICKETT COMPANY is a manufacturing facility operating in Tennessee and incorporated in Tennessee; it is therefore a citizen of Tennessee.

g. Plaintiff CROSSVILLE FABRIC CHILE S.A., a citizen of Chile, is a wool mill operating in Chile, and

h. Plaintiff TOM JAMES CHILE S.A., a citizen of Chile, is a manufacturer in Chile.

This Court lacks personal jurisdiction over Defendant with regard to the claims by Oxxford Clothes XX, Inc., which is incorporated in Illinois and has a manufacturing facility operating in

Illinois, and Holland & Sherry, Inc., which is incorporated in New York and has a sales facility operating in New York, against Defendant Zurich American Insurance Company. There is no general personal jurisdiction over Defendant because Defendant is not incorporated in Indiana and does not have its principal place of business in Indiana. There is no specific personal jurisdiction over the claims by Oxxford Clothes XX, Inc. and Holland & Sherry, Inc. against Defendant Zurich American Insurance Company because, based on the allegations in the Complaint and information and belief, neither Oxxford Clothes XX, Inc. and Holland & Sherry, Inc. have the sustained loss or damage in the State of Indiana for which they are seeking recovery from Defendant Zurich American Insurance Company.

Pursuant to Federal Rules of Civil Procedure 12(b) and 81(c)(2)(C), Defendant will move to dismiss the claims against Defendant Zurich American Insurance Company brought by all Plaintiffs, with the exception of Tom James Company, based on lack of personal jurisdiction in Indiana for the claims against Zurich American Insurance Company.

5. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders that have been filed in the action pending in the Marion County Commercial Court Cause No. 49D01-2004-PL-013613 are attached as Exhibits A, B and C.

6. Written notice of the filing of this Notice of Removal (a Notice to Adverse Parties) will be served upon Plaintiffs as required under 28 U.S.C. § 1446(d). After the filing of this Notice of Removal, Defendant will transmit a copy of this Notice of Removal to the Clerk of the Marion County Commercial Court as required by 28 U.S.C. § 1446(d). A copy of the Notice that will be filed with the Clerk of the Superior Court of Marion County, Indiana is attached as Exhibit D.

7. **Intradistrict Assignment.** This action was filed in Marion County, Indiana, which is within the Indianapolis Division of the Southern District of Indiana.

WHEREFORE, Zurich American Insurance Company, prays that the above described cause of action pending in the Indiana Commercial Court in the Marion Superior Court, be removed therefrom to the United States District Court for the Southern District of Indiana, Indianapolis Division and that this cause proceed in this court as an action properly removed thereto.

Respectfully submitted,

/s/Dennis F. Cantrell

Dennis F. Cantrell, #10794-49

Attorney for Defendant, Zurich American Insurance Company

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2020, the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by the court's electronic filing system and/or First Class, United States Mail, postage prepaid:

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/s/ Dennis F. Cantrell

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